

## Comptroller of the Currency, Treasury

## §4.31

(ii) Pay the estimated fee in full, if the requester does not have a history of prompt payment.

(4) *Failure to pay a fee.* If the requester fails to pay a fee within 30 days of the date of the billing, the OCC may require, as a condition to processing any further request, that the requester pay any unpaid fee, plus interest (as provided in paragraph (c)(5) of this section), and any estimated fee in full for that further request.

(5) *Interest on unpaid fee.* The OCC may assess interest charges on an unpaid fee beginning on the 31st day following the billing date. The OCC charges interest at the rate prescribed in 31 U.S.C. 3717.

(d) *Tolling of time limits.* Under the circumstances described in paragraphs (c) (2), (3), and (4) of this section, the time limits set forth in §4.15(f) (*i.e.*, 20 business days from the receipt of a request for records and 20 business days from the receipt of an administrative appeal, plus any permissible extension) begin only after the OCC receives a revised request under paragraph (c)(2) of this section, an assurance of payment under paragraph (c)(3)(i) of this section, or the required payments under paragraph (c)(3)(i) or (c)(4) of this section.

(e) *Aggregating requests.* When the OCC reasonably believes that a requester or group of requesters is attempting to break a request into a series of requests for the purpose of evading the assessment of a fee, the OCC may aggregate the requests and assess a fee accordingly.

[60 FR 57322, Nov. 15, 1995, as amended at 75 FR 17850, Apr. 8, 2010; 79 FR 15641, Mar. 21, 2014]

### §4.18 How to track a FOIA request.

(a) *Tracking number*—(1) *Internet requests.* The OCC will issue a tracking number to all FOIA requesters automatically upon receipt of the request (as described in §4.15(g)) by the OCC's Communications Department via the OCC's Freedom of Information Request Portal, <https://foia-pal.occ.gov/palMain.aspx>. The tracking number will be sent via electronic mail to the requester.

(2) *If a requester does not have Internet access.* The OCC will issue a tracking

number to FOIA requesters without Internet access within 5 days of the receipt of the request (as described in §4.15(g)) in the OCC's Communications Department. The OCC will mail the tracking number to the requester's physical address, as provided in the FOIA request.

(b) *Status of request.* FOIA requesters may track the progress of their requests via the OCC's Freedom of Information Request Portal, <https://foia-pal.occ.gov/palMain.aspx>. Requesters without Internet access may continue to contact the Disclosure Officer, Communications Division, Office of the Comptroller of the Currency, at (202) 874-4700 to check the status of their FOIA request(s).

[76 FR 43562, July 21, 2011, as amended at 79 FR 15641, Mar. 21, 2014]

## Subpart C—Release of Non-Public OCC Information

### §4.31 Purpose and scope.

(a) *Purpose.* The purposes of this subpart are to:

(1) Afford an orderly mechanism for the OCC to process expeditiously requests for non-public OCC information; to address the release of non-public OCC information without a request; and, when appropriate, for the OCC to assert evidentiary privileges in litigation;

(2) Recognize the public's interest in obtaining access to relevant and necessary information and the countervailing public interest of maintaining the effectiveness of the OCC supervisory process and appropriate confidentiality of OCC supervisory information;

(3) Ensure that the OCC's information is used in a manner that supports the public interest and the interests of the OCC;

(4) Ensure that OCC resources are used in the most efficient manner consistent with the OCC's statutory mission;

(5) Minimize burden on national banks, Federal savings associations, the public, and the OCC;

(6) Limit the expenditure of government resources for private purposes; and

(7) Maintain the OCC's impartiality among private litigants.

(b) *Scope.* (1) This subpart applies to requests for, and dissemination of, non-public OCC information, including requests for records or testimony arising out of civil lawsuits and administrative proceedings to which the OCC is not a party and the release of non-public OCC information without a specific request. Lawsuits and administrative proceedings to which the OCC is not a party include proceedings in which a Federal agency is a party in opposition to the private requester.

(2) This subpart does not apply to:

(i) A request for a record or testimony in a proceeding in which the OCC is a party; or

(ii) A request for a record that is required to be disclosed under the Freedom of Information Act (FOIA) (5 U.S.C. 552), as described in § 4.12.

(3) A request for a record or testimony made by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, a government agency of the United States or a foreign government, a state agency with authority to investigate violations of criminal law, or a state bank or state savings association regulatory agency is governed solely by § 4.37(c).

(4) For purposes of §§ 4.35(a)(1), 4.36(a) and 4.37(c) of this part, the OCC's decision to disclose records or testimony involving a Suspicious Activity Report (SAR) filed pursuant to the regulations implementing 12 U.S.C. 5318(g), or any information that would reveal the existence of a SAR, is governed by 12 CFR 21.11(k).

(5) This subpart does not apply to requests for non-public information filed with the Office of Thrift Supervision (OTS) before July 21, 2011. These requests are subject to the rules of the OTS in effect on July 20, 2011.

[60 FR 57322, Nov. 15, 1995, as amended at 63 FR 62929, Nov. 10, 1998; 64 FR 29216, June 1, 1999; 75 FR 75576, Dec. 3, 2010; 76 FR 43562, July 21, 2011]

#### § 4.32 Definitions.

(a) *Complete request* means a request containing sufficient information to allow the OCC to make an informed decision.

(b) *Non-public OCC information.* Non-public OCC information:

(1) Means information that the OCC is not required to release under the FOIA (5 U.S.C. 552) or that the OCC has not yet published or made available pursuant to 12 U.S.C. 1818(u) and includes:

(i) A record created or obtained:

(A) By the OCC in connection with the OCC's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a national bank, a Federal savings association, a bank holding company, a savings and loan holding company, or an affiliate; or

(B) By the OTS in connection with the OTS's performance of its responsibilities, such as a record concerning supervision, licensing, regulation, and examination of a Federal savings association, a savings and loan holding company, or an affiliate;

(ii) A record compiled by the OCC or the OTS in connection with either agency's enforcement responsibilities;

(iii) A report of examination, supervisory correspondence, an investigatory file compiled by the OCC or OTS in connection with an investigation, and any internal agency memorandum, whether the information is in the possession of the OCC or some other individual or entity;

(iv) Confidential OCC information obtained by a third party or otherwise incorporated in the records of a third party, including another government agency;

(v) Testimony from, or an interview with, a current or former OCC employee, officer, or agent or a former OTS employee, officer, or agent concerning information acquired by that person in the course of his or her performance of official duties with the OCC or OTS or due to that person's official status at the OCC or OTS; and

(vi) Confidential information relating to operating and no longer operating national banks, Federal savings associations, and savings and loan holding companies as well as their subsidiaries and their affiliates.

(2) Is the property of the Comptroller.

(c) *Relevant* means could contribute substantially to the resolution of one